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7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA

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10 CLAUDINE SALDIVAR,  
11 Plaintiff,  
12 v.  
13 INSIGHT GLOBAL, LLC,  
14 Defendant.

Case No. 17-cv-05981 NC

**ORDER TO SHOW CAUSE  
REGARDING FEDERAL COURT  
JURISDICTION OVER PAGA  
CLAIM**

Re: Dkt. No. 12

16 On June 26, 2018, the parties in this case filed a joint status report and a proposed  
17 order that plaintiff Saldivar's representative Private Attorney General Act (PAGA) claim  
18 be stayed pending the arbitration of Saldivar's individual claims. Dkt. No. 12 at 3. The  
19 reason for this proposed order coming before the Court is that the Court stayed this case  
20 pending the Supreme Court's decision in *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612  
21 (2018). Dkt. No. 11. Because the parties agree that the *Epic Systems* decision now  
22 requires that Saldivar's claims go to individual arbitration, the parties request that the  
23 Court stay the PAGA claim, which may not be compelled into arbitration. Dkt. No. 12 at  
24 2-3.

25 However, because of *Epic Systems*, this case no longer involves a class action as  
26 Saldivar signed a class action waiver. This case is no longer a class action for purposes of  
27 the Class Action Fairness Act (CAFA). Thus, there is no longer a hook for federal subject  
28 matter jurisdiction. Yet the Court considers whether it may exercise supplemental  
Case No. 17-cv-05981 NC

1 jurisdiction over the PAGA claim under 28 U.S.C. § 1367. Section 1367(a) provides in  
2 relevant part that “the district courts shall have supplemental jurisdiction over all other  
3 claims that are so related to claims in the action within such original jurisdiction that they  
4 form part of the same case or controversy under Article III of the United States  
5 Constitution.” However, under § 1367(c):

6 The district courts may decline to exercise supplemental  
7 jurisdiction over a claim under subsection (a) if—

8 (1) the claim raises a novel or complex issue of State law,  
9 (2) the claim substantially predominates over the claim  
10 or claims over which the district court has original  
11 jurisdiction,  
12 (3) the district court has dismissed all claims over which  
13 it has original jurisdiction, or  
14 (4) in exceptional circumstances, there are other  
15 compelling reasons for declining jurisdiction.

16 28 U.S.C. § 1367(c).

17 Here, the only basis for the Court’s jurisdiction was under CAFA, and because of  
18 *Epic Systems*, this case is no longer a class action. Therefore, under § 1367(c)(3), the  
19 Court must consider whether it may decline to exercise supplemental jurisdiction. The  
20 Court’s concern is magnified by the fact that the purpose of PAGA is for private parties to  
21 act in the place of the California Attorney General, and that 75% of the penalties from  
22 PAGA go to the California Labor and Workforce Development Agency, a California  
23 governmental agency, and only 25% goes to plaintiff. *Arias v. Superior Court*, 46 Cal. 4th  
24 969, 981 (2009) (citing Cal. Lab. Code § 2699(i)). While there is certainly nothing wrong  
25 with this in theory or in substance, it raises the specter that by letting the PAGA claim  
remain in this Court, the Court would be allowing the “federal tail to wag what in  
substance is a state dog.” *Allen v. Cty. of Monterey*, No. 06-cv-07293 RMW, 2007 WL  
3070973, at \*5 (N.D. Cal. Oct. 19, 2007) (citing *De Asencio v. Tyson Foods, Inc.*, 342 F.3d  
301, 309 (3d Cir. 2003)).

26 Therefore, the parties are ORDERED to each file briefs not to exceed three (3)  
27 pages, or to file one joint brief not to exceed seven (7) pages, explaining why the Court  
28 should, or should not, retain supplemental jurisdiction over Saldivar’s individual PAGA

1 claim. The alternative is that the Court remand this case to Santa Clara County Superior  
2 Court. These briefs, or brief, must be filed by July 23, 2018.

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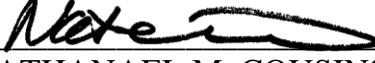
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**IT IS SO ORDERED.**

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6 Dated: July 16, 2018

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NATHANAEL M. COUSINS  
United States Magistrate Judge

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